

EXHIBIT B

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
2 -----x

3 ROYAL PARK INVESTMENTS
4 S.A./N.A., et al.

5 Plaintiffs,

14 CV 8175 (LGS)
14 CV 9366 (LGS)
15 CV 2144 (LGS)

6 HSBC BANK USA NATIONAL
7 ASSOCIATION,

8 Conference

9 Defendant.

9 -----x

10 New York, N.Y.
11 June 29, 2016
11 4:00 p.m.

12 Before:

13 HON. SARAH NETBURN

14 District Judge

15

16 APPEARANCES
17

18 ROBBINS GELLER RUDMAN & DOWD LLP
19 Attorneys for Royal Park Investments plaintiffs
19 BY: CHRISTOPHER WOOD

20 WOLLMUTH MAHER & DEUTSCH LLP
21 Attorneys for Phoenix Light and Commerzbank plaintiffs
21 BY: STEVEN S. FITZGERALD
22 NIRAJ PAREK

23 KOREIN TILLERY LLP
24 Attorneys for NCUA Board plaintiffs
24 BY: JOHN A. LIBRA
25 MAX GIBBONS

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1 (Case called)

2 THE COURT: Good afternoon. Thank you for being here.

3 I have the three letters regarding the scheduling

4 dispute on a going-forward schedule, the letter from HSBC dated
5 June 15th, another that came in yesterday dated June 28th, and
6 then the plaintiff's response on June 20th.

7 I have some thoughts about what I think is appropriate
8 in this case, and I also have some questions. I have more
9 questions related to some of this expert discovery issue. I'm
10 hoping I can get a little bit more information to better
11 understand what makes sense here.

12 Why don't I take the lead for a moment and tell you
13 what I'm thinking. I see that there is some dispute about
14 whether or not the plaintiffs have fully complied with their
15 discovery obligations. The plaintiffs seem to believe that
16 they have or will be in the very near future. The defendants
17 have some concern about whether that is accurate.

18 My thinking is to allow you all to go through some of
19 those documents. It sounds like the defendants have received a
20 significant volume of documents in the last month, so it may be
21 premature to start assuming that documents aren't there. They
22 may be there, you maybe just haven't gotten to them yet.

23 My thinking about how to move forward assumes that
24 there will be a little bit more time in the coming weeks to
25 finalize the document discovery, which isn't to say that

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1 depositions can't begin now if people think it is appropriate.
2 But I think we can factor in a few more weeks to allow both
3 parties to satisfy one another that they have fully complied
4 with the document production. What I would like to do is to
5 set August 1 as a deadline to submit a letter to me if there
6 are ongoing disputes so that we can address that in the first
7 half of August.

8 I recognize that this case is highly complex, that
9 there is a lot at stake monetarily, that there are a number of
10 trusts that we are dealing with even if we are narrowing it to
11 the bellwethers, and that within those trust there are volumes
12 and volumes of loans. I continue to believe, notwithstanding
13 that, given all of the lawyers in the room and all of the money
14 that the parties are investing in this litigation, that six
15 months is an appropriate amount of time for depositions.

16 I'm going to allow people to pull me off the ledge if
17 you want, but what I am proposing is that we have all of fact
18 discovery end in early March: that is, March 1st. The way I
19 come to that number, to give you the rationale in my thinking,
20 is it gives you the remainder of the summer to finalize the
21 document production. That, again, isn't to say that
22 depositions shouldn't begin before September 1st. It's only to
23 say that I am allowing for the possibility that there is
24 ongoing production and ongoing disputes that will need Court
25 intervention.

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1 I appreciate and expect that the majority if not all
2 of the document production should have happened by now. I
3 understand that Commerzbank and Triaxx are a little bit late to
4 the party. I understand that they are going to produce by the
5 middle of August, if not before then, and they should be doing
6 a rolling production if they can.

7 In evaluating these letters and thinking about this in
8 advance of today's conference, I am inclined to issue a March 1
9 cutoff for all fact discovery, which, depending on how you
10 slice it, gives you eight months from now or gives you a couple
11 more weeks to finish document production and gives you six
12 months for depositions. That seems to me a fair and reasonable
13 way to resolve a case of this magnitude and significance.

14 Why don't I ask Mr. Reddington first. I know that you
15 are seeking more time than that. If you want to try and
16 persuade me that June 9, as you propose, is really necessary,
17 I'll hear you out.

18 MR. REDDINGTON: Thank you, your Honor. Our over-
19 arching goal with this scheduling modification is accomplish
20 two things. The first is whatever schedule modification is put
21 in place has to be realistic. The parties have to have a
22 reasonable chance of actually being able to comply with it. I
23 would submit, your Honor, that our schedule is more realistic
24 than what's been proposed by the plaintiffs. Even the
25 compromise that you have suggested may not be enough. Here's

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1 why.

2 First of all, we have 48 million pages of documents
3 already. The plaintiffs are not substantially complete or many
4 of the plaintiffs are not substantially complete with their
5 productions. By our count, we are missing more than a hundred
6 custodians. Some of the plaintiffs didn't produce ESI data as
7 they were supposed to produce under the court order, so maybe
8 there are some additional custodians that are in there that
9 they will be able to point us to when they produce the data.

10 In any event, we know there are lots of custodians missing.

11 THE COURT: Do you know that or do you suspect that?

12 MR. REDDINGTON: We know that.

13 THE COURT: Have you had confirmation from the
14 plaintiffs?

15 MR. REDDINGTON: No. But our vendor can look in our
16 documents and they can, by cross-referencing the ESI data that
17 we do have -- we have some ESI data, we just don't have it
18 all -- they can rule in and rule out certain custodians. So we
19 know there are a number of custodians missing.

20 There is another category where we think they are
21 missing, but we don't have their ESI data.

22 THE COURT: For those custodians that you know are
23 missing based on your vendor analysis, have you had any
24 communication with the relevant plaintiff to ask what's going
25 on?

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1 MR. REDDINGTON: Not since we filed our letters, no.

2 I will note that the custodians that are missing are not
3 insignificant custodians. They are some of what we think are
4 the most relevant custodians in the case.

5 When we came back to the Court in February, we had a
6 dispute over custodians. With plaintiff PIMCO, as an example,
7 the Court ordered that we could select 15 custodians. They had
8 already offered up 5, so we picked 10 other custodians from
9 PIMCO that we wanted. By our analysis, not one of those 10 is
10 somebody whose custodial files has yet been produced, and
11 several of those are obviously very important custodians who we
12 had to go to the Court and fight specifically over to get. So
13 these are significant custodians and a significant number that
14 is missing.

15 So we have missing custodians, we have ESI data that's
16 not been provided.

17 We also have from our analysis lots of documents that
18 have been produced that do not hit on the agreed-to and ordered
19 search terms. We have been able to do some high-level analysis
20 of that. Obviously, it is 48 million pages that we are talking
21 about. But when we look at those documents, we see a lot of
22 things that probably never should have been produced because it
23 is, quite frankly, junk.

24 It is things like mass emailings from Bloomberg. It's
25 newsletters that really have nothing to do with the specifics

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1 of this case. There's lots of totally irrelevant documents. I
2 brought some examples, but I won't bore the Court with them.
3 We've got lasagna menus from the plaintiffs. We have emails
4 about Casper the Ferret. We have a screenplay from a budding
5 screen writer. There's a lot of junk embedded in those
6 48 million pages. Unfortunately, it takes time to get through
7 those pages.

8 The first goal of a schedule modification is to do
9 something that is realistic. The second goal is to do
10 something that doesn't prejudice any party. The problem with
11 plaintiffs' productions are under the current schedule HSBC is
12 being prejudiced on both sides. Right now we can't even begin
13 to get ready for our depositions because the plaintiffs'
14 productions are in such a mess. On the other end, once
15 depositions get going, if we don't have the right documents and
16 they haven't produced the right documents, how can we begin to
17 take depositions on the same schedule as them? That's
18 obviously a concern of ours.

19 THE COURT: You are an experienced litigator, so I'm
20 not telling you anything you don't already know. You will have
21 to try this case without having full satisfaction that you have
22 canvassed every single corner of discovery here, and you will
23 probably end up taking some depositions without fully digesting
24 all of the documents that you might want to. That isn't to say
25 that you should approach the depositions in an irresponsible

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1 way, but at a certain point you need to jump in.

2 HSBC asked for a significant amount of documents. I'm
3 not blaming them or saying it was inappropriate. We have had
4 lots of litigation over this, so I've ruled. But you've got
5 your volume of documents. It shouldn't be as junky as you're
6 claiming that it is. I don't know whether that is true or not
7 or what percentage or if you are pulling out the fun ones. In
8 any event, at a certain point you just need to jump in.

9 My concern is that we are just going to keep kicking
10 the can because you will never feel like the time is right.

11 MR. REDDINGTON: I don't disagree with your
12 inclination that at some point you have to jump in. First of
13 all, these documents are not complete, so we don't even have a
14 complete set of documents yet. The second issue is the way
15 they have been produced, we can't jump in. It takes weeks to
16 even load the volume of some of these productions.

17 The way they have all come in, about 50 percent or
18 more, right around 40 to 50 percent of their productions came
19 within the last month. We started back at the beginning of the
20 year trying to understand their productions by using computer-
21 assisted review. It's an iterative process. The problem is
22 every time they produced another million pages to us, we
23 couldn't continue with that same computer-assisted review, we
24 had to start over from scratch. Then here we are now within a
25 month of the document production deadline.

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1 To remind the Court, the plaintiffs told the Court at
2 least four times -- in November, when we were still in front of
3 Judge Scheindlin; in January, when we were in front of you; and
4 February and April, when we were in front of you -- that they
5 thought they were just about substantially complete or would be
6 substantially complete soon. Since that time, they produced 40
7 percent or more of their productions in the last month of
8 discovery. We are talking millions of pages of documents.

9 So, jumping in isn't as easy as it sounds. To
10 actually work with the documents, they have to be loaded, they
11 have to be analyzed, they have to be sorted. We can't even do
12 that right now. That's one of the problems with just jumping
13 in.

14 In a normal case, you would have a more reasonable
15 process. Parties would produce documents on a schedule, there
16 would be some period of time where they could evaluate those
17 documents, there would probably be meet and confers with them
18 where they follow up on things about the documents, and then
19 they would begin their depositions being reasonably informed
20 and with a reasonable set of documents. They might not have
21 every document, but they would at least have a reasonable set
22 of documents.

23 Here I would submit that given the complexity of this
24 case and given the size and given the issues at stake, we
25 should not want to deviate from that sort of normal process.

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1 We should still have the time to analyze the documents, to
2 understand them, and to let the federal rules work the way they
3 were designed.

4 THE COURT: I'm assuming six months for depositions is
5 a reasonable amount of time. I know there are a lot of them to
6 be had, but there are a lot of lawyers here, so I think six
7 months is enough time. Backing out, how much time do you need?
8 My March 1 schedule was giving you two months to ride the
9 plaintiffs and get whatever documents you think you haven't
10 gotten, get in touch with me, and I will act promptly so we can
11 get rulings if there are disputes about what's been turned over
12 or not.

13 I know in one of the letters you proposed a deposition
14 because you think you're not getting everything. I think we
15 might be a little premature on that, but maybe at some point in
16 the near future that is necessary. That gives you two months
17 for this process. Even if you don't have everything, you
18 probably have a lot to begin this process of sorting and
19 reviewing. Why isn't two months enough time before you start a
20 deposition on September 1?

21 MR. REDDINGTON: A couple of things. First of all, we
22 don't think they are even close to being done. If we are
23 missing a hundred-plus custodians and they are the key
24 custodians in the case, we think we are going to get a lot more
25 documents over the next two months.

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1 THE COURT: Isn't it only 112 that were ordered to be
2 searched?

3 MR. REDDINGTON: 239, your Honor. 112 is what we
4 thought we were missing in our first letter. Since that time
5 we have had several million pages of additional documents
6 produced to us and we found five other custodians. Right now
7 we believe the number of custodians we are missing is 107. So
8 there's a lot of custodians missing.

9 Second of all, we have tried to evaluate the
10 productions based on the agreed-to search terms. What we found
11 is they produced a lot of stuff that doesn't hit on the search
12 terms, and there are lots of search terms for which we see
13 either no or very few documents. That raises questions in our
14 minds about whether or not the parties are actually running the
15 agreed-to search terms that were ordered by this Court.

16 We have some concerns about that because in a
17 meet-and-confer with one of the other plaintiffs -- it was the
18 Triaxx plaintiffs, who obviously are behind the other
19 plaintiffs because they came into this case late -- they
20 circulated to us their view of what the ordered search terms
21 were, and there were deviations in those terms from what we
22 understood the ordered terms were.

23 Additionally, Phoenix Light tells us they don't have
24 employees, most of their decisions would have been done through
25 collateral managers. So we have had to go out to their

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1 collateral managers and issue third-party subpoenas to them to
2 try to get documents out of their collateral managers. Some of
3 the collateral managers have sort of said as an aside that they
4 didn't think the parties were running the same search terms.
5 We were in negotiations with the collateral managers over what
6 search terms we wanted them to run.

7 When we look at the high-level data that we have and
8 see search terms not in there, search terms that we believe
9 were ordered by the Court not in there, we think maybe they are
10 not running the right search terms. That's obviously got to
11 get worked out before we know if their productions are complete
12 even two months down the road.

13 Again, we think we are going to get a lot of documents
14 in the next two months. Even after we get those documents
15 we've got to evaluate them and see if they are what they are
16 supposed to be. And it takes a long time to go through those
17 documents.

18 Move to the depo side for a second. On the depo side,
19 under the deposition protocol the parties potentially could
20 take 125 depositions in this case. Maybe we won't take that
21 many at the end of the day, but that's what at the beginning
22 the parties planned as a possibility. That doesn't even count
23 third-party depositions. Remember, all these trusts have a lot
24 of third parties that the plaintiffs rely upon to make their
25 allegations. They say the problems are the servicers didn't do

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1 what they were supposed, to, the originators didn't do what
2 they were supposed to do. Those third parties are separate and
3 above that 125 deposition total. If you were to take 125
4 depositions plus some unknown number of third parties -- there
5 are about 20 business days in a month. If you were to take all
6 those depositions, if you took a deposition on every day of the
7 month for the next six months, you still wouldn't be able to
8 complete 125 depositions. Of course, if we are going to be
9 realistic, I think it is highly unlikely the parties are
10 actually going to going to take one deposition a month.

11 THE COURT: A day.

12 MR. REDDINGTON: I'm sorry. One a day.

13 THE COURT: I think it is highly likely they will take
14 one deposition a month.

15 MR. REDDINGTON: Not going to take one a day for sure.
16 As an example, more than two months ago we, HSBC, noticed seven
17 depositions of the plaintiffs. They were supposed to take
18 place this month. They were all canceled by the plaintiffs.
19 Some as late as a week out from their depositions, we were
20 informed those dates didn't work for the plaintiffs. So even
21 with two months' notice, we weren't able to accomplish the
22 depositions that we had tried to notice.

23 I don't know how long it's going to actually take to
24 do the depositions. But if our goal is to be realistic and not
25 prejudice anyone, I think six months is probably not going to

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1 be it and we are going to be back here at some point in the
2 future having the discussion further.

3 THE COURT: Whatever schedule I set is going to be the
4 final schedule.

5 MR. REDDINGTON: That's the problem. I don't want to
6 represent to you that I think six months is going to work when
7 I really don't think it is, your Honor.

8 THE COURT: Who do you think is the worst offender as
9 far as the lack of document production?

10 MR. REDDINGTON: They all have different issues, your
11 Honor.

12 THE COURT: Give me just one.

13 MR. REDDINGTON: The worst offender is the BlackRock
14 plaintiffs.

15 THE COURT: Mr. Galdston, lucky you. Why don't you
16 tell me where you think you are on document production.

17 MR. GALDSTON: Let me say I strongly disagree with a
18 number of the statements that Mr. Reddington may have, not
19 surprisingly, made. I share the Court's concern about
20 continuing to kick the can down the road. We have made an
21 incredible effort to make productions on behalf of the
22 plaintiffs in this case. As your Honor is aware, HSBC recently
23 added approximately 20 new custodians. That does take time.

24 THE COURT: I'm going to interrupt you. I have no
25 doubt that you have made an incredible effort and I'm

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1 intimately aware of where you are in discovery. Tell me where
2 you are in production.

3 MR. GALDSTON: We have produced approximately
4 5½ million documents. We have prioritized productions from the
5 plaintiff entities that have the largest the financial interest
6 in the case, that hold most of the bellwether trusts. We have
7 some additional productions that are remaining for various
8 custodians that have been recently added as well as --

9 THE COURT: Approximately how many custodians have not
10 you not produced for?

11 MR. GALDSTON: I don't know that exact number at this
12 point.

13 THE COURT: Is that 40 or 4?

14 MR. GALDSTON: It's more in the 4 range. I don't know
15 the exact number, so I'm hesitant to make a representation to
16 the Court.

17 THE COURT: Do you have a sense of when you will be
18 100 percent completed with discovery?

19 MR. GALDSTON: We looked at this very carefully, our
20 2-month, 60-day extension that we proposed.

21 THE COURT: You propose that you complete discovery
22 August 12 and then there are just 6 months. Whatever remains,
23 you could produce it all August 12th?

24 MR. GALDSTON: Correct, your Honor.

25 THE COURT: Then you propose all the depositions

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1 happen within the next 6-month period?

2 MR. GALDSTON: That's correct, your Honor. We
3 actually had had a number of discussions with Judge Scheindlin
4 on this point and represented previously that we thought 5 or 6
5 months was sufficient to complete the deposition discovery.
6 That was back in November of last year, I believe. At the time
7 HSBC raised no objection to that suggestion. I'm a little bit
8 surprised.

9 I do want to highlight one other issue which the Court
10 has raised. We are hearing about this for the very first time
11 in connection with today's hearing. None of these issues were
12 raised with us prior to the letters that were submitted. If
13 they have concerns about the character or the quality of our
14 productions, this comes as a complete surprise to us. We
15 really haven't had an opportunity to analyze or respond to
16 these issues.

17 I will represent to the Court that we are using the
18 search terms that we were ordered to search. We are searching
19 the custodians that we were ordered to search. If HSBC is
20 dissatisfied with the character of the productions, they really
21 only have themselves to blame.

22 These documents, I will tell the Court, are responsive
23 to their requests, they are responsive to the search terms. We
24 have consulted with our vendor and confirmed that they are in
25 fact applying the search terms uniformly. There is no

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1 selective process being deployed here.

2 There are, as with any production, anecdotally oddball
3 documents that slip through and get into the production that
4 may contain a recipe or a screenplay. I'm sure it would come
5 as no surprise that we have dozens of similar documents that
6 HSBC has produced. So that really is of no concern here.

7 But the idea that somehow we are producing junk is
8 really just a fallacy. These are the very same documents that
9 we informed HSBC we did not believe were relevant to the case
10 but nevertheless they insisted be produced.

11 THE COURT: Why is it going to take you another six
12 weeks to finish document production? That's what you are
13 proposing, till the middle of August. That's six weeks from
14 now.

15 MR. GALDSTON: Correct.

16 THE COURT: What happened? Originally, the deadline
17 production was mid June.

18 MR. GALDSTON: We had 20 new custodians recently
19 added. It takes time to collect their documents and produce
20 them.

21 THE COURT: It will take six weeks from today to
22 produce those?

23 MR. GALDSTON: Correct, your Honor, to collect,
24 review, process, and produce.

25 THE COURT: Okay. Do any other plaintiffs want to

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1 speak about their document production, particularly those that
2 think that maybe they have a fair amount left to go?

3 MR. FITZGERALD: Your Honor, for Phoenix Light, we are
4 substantially complete. We wanted to point out to your
5 Honor --

6 THE COURT: "Substantial" is a term that maybe has
7 different meanings to different people. Can you give me a
8 little bit more meat on the bones? What do you mean by
9 substantially complete?

10 MR. FITZGERALD: We have completed. We are continuing
11 to review our privilege log and finalize that. Sometimes some
12 documents get off the privilege log and they will get produced.

13 THE COURT: You have gone through your custodians.
14 Once you have done this privilege review, you are about ready
15 to make a production?

16 MR. FITZGERALD: Actually, we don't plan on making a
17 production, but we will if we determine that documents need to
18 come off that privilege log.

19 THE COURT: So that's substantial completion?

20 MR. FITZGERALD: Yes, your Honor. We wanted to point
21 out that there were some assertions in HSBC's first letter with
22 regard to the Phoenix Light production, we think with regards
23 to all the plaintiffs' production, that HSBC has admitted were
24 just flatly wrong. It highlights something your Honor brought
25 up. This should have been hashed out among the parties before

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1 we came to the Court with this.

2 The first we heard about it was in the letter. They
3 had to retract several statements they made, particularly with
4 regard to Phoenix Light. We pointed out that they have had
5 these five custodians for almost a year and they asserted to
6 your Honor that they hadn't been produced. So the accuracy of
7 the assertions they are making is highly questionable.

8 I thought the procedure that your Honor mentioned or
9 proposed made a lot of sense: that we meet and confer and we
10 come to your Honor on August 1st with any disputes. That makes
11 a lot of sense.

12 With regard to Commerzbank, we are working through our
13 document production, but we are on a different schedule. Our
14 substantial completion goal is in August.

15 THE COURT: August 11.

16 MR. FITZGERALD: Right.

17 THE COURT: You are going to stand by that?

18 MR. FITZGERALD: Yes, we should, your Honor.

19 THE COURT: Good. Thank you. Yes?

20 MR. WOOD: Christopher Wood on behalf of Royal Park.

21 I would like to echo the concerns about representations made by
22 HSBC in its letter. With respect to Royal Park, they claim
23 that there were eight custodians that we agreed to for which we
24 hadn't produce documents. We went back and looked at it, and
25 none of those custodians were actually agreed-upon custodians.

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1 So I'm very concerned about the accuracy of those
2 representations.

3 With respect to Royal Park's production, I think we
4 are also substantially complete, quote-unquote. What I mean by
5 that is there are a number of foreign language documents which
6 are being translated, which have to be reviewed, as well as
7 some privilege issues that we are finishing. We think that the
8 deadlines that the plaintiffs have proposed are reasonable, at
9 least from our perspective.

10 I guess we will have to wait and see if HSBC has
11 actually done their production. I don't think we have received
12 any privilege logs from them yet, so we haven't had a chance to
13 evaluate that. And there may be additional discovery disputes
14 that come up.

15 THE COURT: Thank you.

16 MR. LIBRA: Your Honor, John Libra on behalf of the
17 NCUA Board. We have been open with HSBC with respect to our
18 productions. Their letter indicates that we have produced from
19 nearly all of the custodians that we proposed. We have run
20 search terms through those documents and been producing them to
21 HSBC. I don't think there is a real concern there.

22 There is one issue with one of the credit unions who
23 purchased some of the certificates in the case as a whole, but
24 none of the certificates in the bellwether trusts where we have
25 had some issues, because they were conserved back in 2010. The

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1 NCUA has been attempting to decrypt the hard drives that the
2 credit unions had. This has taken some additional time.

3 We expect to be able to work through these issues. We
4 have one now that we think we can open. We have talked about
5 that with HSBC, so I don't think it will come as a surprise to
6 them that there will be some additional productions from that
7 credit union. We have made productions from the paper
8 documents that we had from that credit union, so there is not
9 an entire absence of production there.

10 We are working through the issues. I don't want to
11 use the term "substantial," either, but within the schedule
12 proposed by the plaintiffs, we will be able to meet that and
13 produce what we have agreed to produce.

14 There is one issue we would like to raise with the
15 Court here today that goes to some of these issues. As other
16 plaintiffs have mentioned, some of these things haven't really
17 been raised before, so we haven't had a chance to fully discuss
18 them with HSBC.

19 I think there may be sort of a fundamental misunder-
20 standing between the parties as to how this process of
21 producing documents ought to be going. I can speak for my
22 client NCUA Board, and I have discussed with the other
23 plaintiffs, what we have been doing to produce documents as it
24 relates to these search terms.

25 What we have done is collected our universe of

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1 documents and run the search terms across those, and then done
2 what I would call light review for responsiveness, and also for
3 privilege of course. As a result, certain things do slip
4 through, recipes, other odd pieces of information.

5 Our understanding about the scope of this process and
6 what the Court was ordering us to do was that we should be
7 taking the results of those searches terms and essentially
8 presuming that those were responsive documents that ought to be
9 produced in this litigation. Otherwise, what was the point of
10 this whole vigorous back-and-forth over what these terms were
11 going to be and who the custodians were going to be, if there
12 was then going to be some additional hardcore what I would call
13 relevance review of those documents?

14 From what we have reviewed thus far from HSBC's
15 production and from our conversations with them, we have a
16 strong suspicion that there's been a much more involved
17 responsiveness review/relevance review of those documents that
18 were the result of these search terms. We want to raise that
19 issue with the Court.

20 We have been trying to get an answer from HSBC as to
21 what level of review they have been performing on the results
22 of these searches, and we haven't been able to get a straight
23 answer from them. What we have heard here in court, what we
24 have seen in the documents, and what we have heard from them in
25 our back-and-forth on these issues doesn't leave us very

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1 confident that they have been actually producing what are the
2 responsive documents that we believe are relevant.

3 What we think is happening here is that they are
4 taking the search term documents and then applying their own
5 subjective test as to what is relevant to those, and then
6 producing that smaller set of documents. As you know, we have
7 been in here a number of times and we are obviously on
8 completely different sides of the earth as to what is relevant
9 here in these lawsuits.

10 We don't think it is appropriate for HSBC to be
11 applying that level of review to these documents. We think as
12 a result of it, we haven't been receiving what we are entitled
13 to receive that we need in order to prove our case. I'll give
14 you a couple of quick examples.

15 One would be a discussion of a certain servicer or a
16 certain originator that doesn't specifically refer to a bell-
17 wether trust. We think those documents are being screened out
18 of this process, not turned over to us. They may argue, hey,
19 that's not relevant, but in our view of these cases it is
20 extremely relevant to show that HSBC discovered problems within
21 these trusts with these originators, with these servicers.

22 Another example is documents that would speak to
23 various policies about repurchasing documents. It is true they
24 have produced some of their formal policies, but as we
25 understand it, documents that discuss more generally, emails

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1 between various employees that talk about repurchase protocols,
2 that type of thing, we don't think those have been produced.
3 We think those have been screened out based on HSBC's
4 subjective view that that material isn't relevant.

5 You have heard from Mr. Reddington and HSBC about the
6 various deficiencies they see in our productions. I think I
7 can speak for all the plaintiffs in saying that we have tried
8 to adhere to running the searches. We are trying to weed out
9 as much junk as we can, but we have a large volume of material,
10 so certain things are going slip through and be produced.

11 Speaking personally for our client, we would rather
12 have them give us too much and we can search through it and
13 figure out what is junk and what is not, than get way too
14 little. From what we have seen, we are getting way too little
15 here. We would ask the Court and HSBC to clarify what kind of
16 review they are doing of these documents, and we would ask the
17 Court to give us some guidance on what we ought to be doing
18 here.

19 I am hesitant to wait until August to come in with
20 these type of issues because this is really a fundamental
21 issue. If there has been this deeper level of review on these
22 documents and we haven't been receiving the responsive hits to
23 our search terms that we went back and forth to negotiate,
24 that's a big problem and that is going to push out the schedule
25 even further. So, to the extent there has been this more

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1 in-depth review going on, we would ask the Court to order HSBC
2 to turn over the broader universe of documents that resulted
3 when they ran those search terms.

4 We are not asking them to turn over material they
5 consider privileged, but we don't think it is appropriate for
6 there to be sort of a responsiveness/relevance type of review.
7 That's an issue we think is appropriate for the Court to take
8 up today, and we would like to hear what HSBC has to say on
9 that.

10 THE COURT: That is an issue I wish had been raised
11 several months ago. Maybe you didn't identify it at that time.
12 I agree with you that it is a fundamental issue and seems
13 highly complex if we find that people are doing things
14 differently. Mr. Reddington, why don't I give you an
15 opportunity to respond.

16 MR. REDDINGTON: I'm not sure where to respond, since
17 I'm hearing this for the first time today. I guess I would say
18 he's not entitled to everything that hits on a search term if
19 it is not relevant and responsive. It has never been my
20 experience that that is what search terms are for.

21 Search terms are designed to find documents that might
22 be relevant, and then a review has to be done to determine
23 whether in fact they are actually relevant and responsive to
24 requests. If plaintiffs are not doing that -- it is my
25 understanding that they would be doing that or they should be

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1 doing that. That might go a long way to explaining why we have
2 48 million pages of junk and can't even assess their
3 productions.

4 I mentioned I brought some sample documents. Not all
5 of it is lasagna, not all of it is screenplays. Almost 50
6 percent or more of some of these plaintiffs' productions are
7 Bloomberg emails and newsletters that might talk about in very
8 high generalities the banking industry or RMBS issues but
9 actually have nothing to do with this case.

10 It would take an incredible amount of labor and work
11 to wade through that junk to actually find what is relevant and
12 responsive to a case that is supposed to be about something
13 that an indenture trustee did in specific trusts with respect
14 to specific loans. This is the first time I'm hearing that the
15 plaintiffs think there is nothing to be done other than run
16 search terms and produce documents.

17 If you recall, your Honor, back when we had these
18 fights about search terms, HSBC principally was arguing for
19 narrower search terms as the parties negotiated this protocol,
20 and we ultimately had to come to the Court in January and
21 February to resolve that, mostly by ordering the narrower
22 terms.

23 There would be no reason to worry about the terms if
24 there wasn't going to be a review. If you weren't going to
25 review the documents, you could produce 3 million documents and

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1 it would take no time. Only if you are going to review the
2 terms, review the documents to identify what is actually
3 relevant and responsive does the number of documents matter.
4 That's the way it's supposed to work.

5 They don't have an entitlement to things that aren't
6 relevant. They don't have an entitlement to things that aren't
7 responsive. In fact, parties shouldn't want that stuff.
8 That's our problem here. They are producing a bunch of stuff
9 that has nothing to do with this case.

10 MR. LIBRA: Your Honor, I think you just heard from
11 HSBC what our exact concern is. Mr. Reddington keeps saying
12 they are reviewing for responsiveness and relevance. We have
13 fundamentally different views of what is relevant here. You
14 have heard Mr. Reddington in court in the past take a look at a
15 document that described a servicer and say, I don't think that
16 is relevant. Well, we do. We are entitled to know what is
17 going on behind the scenes in order for that determination to
18 be made.

19 THE COURT: This is a problem that is as old as
20 litigation, right? In every litigation, one party asks the
21 other party for responsive documents and there is an assumption
22 that officers of the court are reviewing documents, and
23 producing appropriate non-privileged responsive documents.

24 I agree that the advent of ESI discovery doesn't
25 change the obligation to review for relevancy, and the concept

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1 here was that we identify search terms that are likely to
2 generate the most relevant documents. It may be that we don't
3 pick the right terms and there are some hot documents, as you
4 call them, that are not being captured. That's the problem
5 with these massive volumes of documents, that there is a
6 sifting process through the search terms.

7 That doesn't necessarily mean that there is what
8 people call a document dump, where you produce every single
9 document. Maybe you all were of the view that that was the
10 better course, but I don't know that there was a guarantee or a
11 promise or an obligation on the part of HSBC to just produce
12 whatever its hits provided.

13 The terms were broad. That was part of the disputes
14 that we had in the first instance and part of the narrowing
15 that I tried to do so that we could focus in on what was truly
16 going to be responsive to the discovery demands. That was the
17 goal there. But I don't think you had any right to just get
18 everything that was produced by the report.

19 MR. LIBRA: Your Honor, the issue from our point of
20 view is we don't know what is being held based on HSBC's
21 decision that something is irrelevant to the case. We have no
22 way of evaluating how much information is being filtered out on
23 this relevance review versus how much information exists.

24 THE COURT: Isn't that true in a slip-and-fall case?
25 That always happens. There's always one side doing a relevance

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1 review, and sometimes the party seeking the document knows that
2 there is a document out there and they don't get it, and then
3 they can call the lawyer out for being overly ungenerous with
4 its relevance review.

5 But the mere speculation that their relevance review
6 is unfair, without any basis. I don't know what I'm supposed
7 to do with that, quite frankly. I'm not going to spend my time
8 reviewing these documents. I'm not sure what to do with that
9 information.

10 MR. LIBRA: Your Honor, I think at a minimum we are
11 entitled to know what material they are withholding based on a
12 relevance standard.

13 THE COURT: Their answer is going to be we are
14 producing documents relevant to your discovery demand, I
15 assume.

16 MR. LIBRA: They have run the searches. We agreed
17 upon those searches. Those are supposed to identify the
18 responsive documents here to our document requests and their
19 document requests. There is an additional review, an
20 additional determination going on now as to whether or not
21 these documents are relevant.

22 If they are withholding something that is responsive
23 because it hit upon a search term but they think it is not
24 relevant, I think we are entitled to know what that is so we
25 can challenge it. We have no other means of knowing what

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1 documents may exist. We suspect there are many because there
2 are obviously issues with other trusts. There are obviously
3 issues with non-bellwether trusts that discuss the conduct of
4 these originators.

5 THE COURT: What are you asking me to do? If I ask
6 Mr. Reddington, what narrowing are you doing once you have
7 culled together the presumptively relevant documents from the
8 search, my assumption is his answer is going to be, we then
9 review the documents to make sure that they are responsive to
10 the document demands.

11 The search terms are not the document demands. The
12 search terms are just a way to get to responsive documents.
13 Then the production is responsive to the document demands. He
14 is going to say, I looked at what the document demands were and
15 I decided whether these were responsive. I assume that's what
16 he is going to say. What are you going to do with that
17 information?

18 MR. LIBRA: We would be able to challenge this
19 determination on HSBC's part that these documents are not
20 relevant to the case if we had some kind of a log or other
21 means of identifying and reviewing some of those documents.

22 Perhaps one way to get at that would be to know all of
23 the various parties here have pulled together a universe of
24 documents from their custodians and also from relevant network
25 drives and various other places to come up with the broader

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1 universe of documents in this case. We have all then applied
2 our search terms to that universe of documents, and then that
3 has resulted in the sort of universe of documents that are
4 presumptively responsive. That's a concrete identifiable
5 universe of documents. There is then the documents that have
6 been produced.

7 At a minimum, we need to know out of that smaller set,
8 the set that resulted from running the search terms, how many
9 of those have been produced to us. If it's an extremely small
10 number, that is evidence to me that there is a very high level,
11 very detailed level of additional review that's going on before
12 we see any documents.

13 THE COURT: Except that they say that half of the
14 documents you produced are Bloomberg reports or lasagna
15 recipes.

16 MR. LIBRA: Your Honor, they have asked for
17 essentially everything having to do with our RMBS investments.
18 Those Bloomberg messages are certainly something having to do
19 with all of the plaintiffs' RMBS investments. That's why we
20 produced them. In fact, we had a discussion with HSBC and said
21 if you don't want them, we will try and pull them out. But
22 they are responsive.

23 We think they are irrelevant, of course. We think the
24 vast majority of the material that we have been producing to
25 them is irrelevant. We think this case should be focused on

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1 what HSBC didn't do with respect to protecting investors in
2 these trusts. We don't think what our plaintiffs did matters
3 at all. That doesn't mean we get to withhold it all from them.
4 We still need to produce it. It's responsive to their
5 requests, and it can form a foundation of their defenses in
6 this case.

7 We just ask for the same in return, that we get the
8 documents we think are responsive. We can have an argument
9 later about whether or not the conduct of a servicer that
10 wasn't servicing a particular bellwether trust is relevant to
11 our case. But we ought to be entitled to see that material and
12 attempt to use it to prove our claims here.

13 I think we are only getting a sliver of what has been
14 hit upon the search terms. So really at a minimum what I am
15 asking for, your Honor, is to at least order HSBC to tell us
16 what that universe was of the documents that resulted from
17 running the search terms and tell us how that compares to what
18 they have produced.

19 MR. GALDSTON: May I add just one thought?

20 THE COURT: After your colleague.

21 MR. WOOD: On behalf of Royal Park, in response to
22 what Mr. Reddington said, his suggestion that he had not
23 understood that we were turning over documents responsive to
24 search terms is completely contrary to the agreement that we
25 reached with his colleagues.

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1 We specifically discussed this earlier in the year,
2 whether or not Royal Park was doing a relevancy review. They
3 were concerned about the scope of what we think is relevant or
4 not, and we told them that the easiest way to deal with this is
5 we would just produce all the documents that were responsive to
6 the search terms and not do that relevance review, and they
7 specifically agreed to that.

8 Mr. Reddington, perhaps they are not talking on their
9 side, but I'm slightly upset that he would make a
10 representation that he hadn't understood, at least from Royal
11 Park, that that's what they were doing, because that's what
12 they agreed to. Frankly, we expected that that's what they
13 would be doing too. So we are a little surprised by that.

14 THE COURT: Thank you.

15 MR. GALDSTON: A few details to add to what Mr. Libra
16 ably addressed. We now live in a modern technological world,
17 massive amounts of information, and most courts abide by and
18 follow the Sedona principles. Judge Scheindlin has co-authored
19 a handbook on e-discovery that embraces this very same concept.
20 Search terms are intended to reduce the need for manual review.
21 That is a fundamental tenet. That is what we attempted to do
22 here.

23 We did not impose our view. While we objected to
24 objected to many of the requests that HSBC propounded and we
25 felt in our view they were not relevant to any party's claim or

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1 defense, we did not impose our view of that relevance in
2 screening out the documents that they nevertheless specifically
3 requested.

4 The Bloomberg reports, these same things they are now
5 calling junk, the very same documents they asked us for, we
6 objected to producing. Nevertheless, we did not impose in
7 secret our screen of what we think is relevant or not relevant.
8 That's where the disconnect is. We are entitled to know, and I
9 believe they are obligated to tell us, what documents they are
10 withholding based on their view of relevance, which we disagree
11 with.

12 THE COURT: Here is what I'm going to do.

13 MR. FITZGERALD: One more thing, your Honor. You
14 raised one point that I think is interesting. What Mr.
15 Reddington is saying is they are doing a responsiveness and a
16 relevance review. Our position is they should be doing a
17 review for responsiveness only. They make the subjective
18 determination on top of that with respect to relevance. I
19 would like to hear a representation from Mr. Reddington of what
20 the review is, your Honor.

21 THE COURT: This is an issue that seems like there may
22 be, given what counsel from Royal Park has said, maybe not full
23 information that Mr. Reddington has. It sounds like this is an
24 issue that is new to the parties. I want you to discuss this
25 among yourselves immediately. It may be that a conversation

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1 can be had. It may be that what he is describing is not as
2 heavy a review as the plaintiffs fear. It may be what counsel
3 for Royal Park was saying has actually been borne out and that
4 they haven't been doing this kind of a relevance review.

5 I think in the first instance you all should speak and
6 see what the world is. I'm going to ask you to send me a
7 letter jointly a week from today and let me know where things
8 stand. I'll get you all on the phone right away and we will
9 resolve the issue. Let's get a letter in July 5th. You should
10 be speaking this week. I know it's a holiday week, but
11 hopefully all can speak.

12 MR. GALDSTON: Your Honor, one point of clarification
13 on process. I know your Honor's rules and procedures do not
14 permit reply letters. But there seems to be an ongoing
15 practice of submitting several replies. When you say a joint
16 letter, it's just one letter, correct?

17 THE COURT: Correct.

18 MR. GALDSTON: No replies, correct?

19 THE COURT: Correct. You all talk and just tell me
20 your positions.

21 MR. GALDSTON: Thank you.

22 THE COURT: I'll throw this out there. It may be that
23 you talk and agree with one another and everybody is doing the
24 right thing. Then the joint letter can be easy, saying we
25 worked this out, we don't think there is a problem. If what

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1 you learn is that HSBC has been significantly filtering the
2 documents in a way that you think is fundamentally unfair, I
3 will hear from you all and probably get you on the phone, and
4 I'll make a direction as to what I think is appropriate.

5 MR. REDDINGTON: Your Honor, may I address one point?

6 THE COURT: Yes.

7 MR. REDDINGTON: I think it is a good idea for the
8 parties to meet and confer about this. There is some
9 information that we need from the plaintiffs as well for that
10 meet and confer, so I ask that they be asked to do that, to
11 give us that information.

12 First of all, to understand what search terms are
13 actually being used here, I would ask that all parties
14 circulate the terms they are running so that we can then
15 compare them and see if there are any disputes or any daylight
16 between what the parties think the operative terms are.

17 Second, since we believe based on our review of the
18 documents that there are many custodians missing, and I have
19 heard today that the other side doesn't think that's the case,
20 can we ask the plaintiffs to identify specifically the
21 custodians for whom they have been ordered or agreed to produce
22 documents and for which they are still doing that, so we are at
23 least on common ground on those two relatively basic issues?

24 THE COURT: The letter I want on July 5th is just
25 going to be about HSBC's review. That's what I want to focus

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1 on right now. If it turns out that you guys are running this
2 through a filter that is blocking 75 percent of the hit
3 results, I'm going to have a big issue I have to deal with. So
4 let's tee that up right away.

5 Everybody should be up front about where they are on
6 discovery. There is no hiding the ball here. It sounds to me,
7 based on what I have heard, that many of the plaintiffs are
8 undergoing final privilege reviews or other tail-end document
9 reviews. It sounds like the BlackRock plaintiffs have maybe a
10 more substantive review that they are undergoing.

11 Mr. Galdston, if you can identify which custodians you
12 are still in the process of reviewing, it would be helpful,
13 just so they don't think you have forgotten these custodians
14 and they know exactly what is there. There is no reason for
15 hide the ball here.

16 I agree with the principle that there should be full
17 disclosure back and forth, but the thing I want to resolve most
18 immediately is this question about whether there is some unfair
19 filtering going on by HSBC for its production. For now the
20 July 5 deadline is for a letter related to HSBC's review of the
21 documents that it culls from the agreed-upon search terms.

22 In the next week or so all of the plaintiffs should
23 also be providing in writing to HSBC what search terms they are
24 running so everybody can be satisfied they are running the
25 correct search terms; in as much as detail as possible what

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1 custodians have not yet been searched or are in the process of
2 being searched so that when HSBC reviews their review and finds
3 that Joe Smith is not there, they don't think Joe Smith has
4 just been forgotten, they understand that Joe Smith is being
5 reviewed as we speak.

6 I'm satisfied that there is a lot of work to do still.

7 I'm not going to give you until June 9th. It's too far away.

8 I will give you another month from when I came to the bench.

9 In honor of this case, I'm going to close fact discovery on
10 April Fool's Day, which is April 1st, Friday, April 1st.

11 That's a real date.

12 Let me talk about expert reports. I have a question.

13 Is Mr. Fitzgerald here?

14 MR. FITZGERALD: Yes.

15 THE COURT: You wrote the letter. You mention in the
16 letter that you had originally proposed a protocol for the
17 reunderwriting to streamline that expert review and analysis.
18 I will betray my ignorance that I am not fully familiar with
19 what the reunderwriting review process is, but I have a pretty
20 good sense. I have read what I think is the leading case on
21 it, so I have a pretty good sense. I want to hear what the
22 protocol was that you had proposed that HSBC rejected.

23 MR. FITZGERALD: Absolutely, your Honor. We had
24 proposed that we enter into a loan file reunderwriting protocol
25 similar to the one that was used in the FHFA litigation before

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1 Judge Cote. Those protocols provide that the parties were
2 collaboratively to collect loan files at the outset, exchange
3 or collect the loan tapes, so they could identify the loans,
4 identify any samples that the parties would use, identify the
5 guidelines the parties agreed were the guidelines, get an
6 agreement by the parties that the loan files were the actual
7 complete loan files. Those are very time-consuming matters.
8 If there is agreement on that up front, I can tell you it cuts
9 the process down considerably.

10 THE COURT: You would agree, just so that I understand
11 the process, that these 500 loans would be the sampling that
12 everybody is going to say look at, and you would agree that
13 these are the guidelines that we are all going to measure these
14 loans up against? Is that the concept?

15 MR. FITZGERALD: Exactly, your Honor. That's exactly
16 the concept. We have found that extremely useful. I think
17 defendants would admit that it was useful too. Maybe not these
18 defendants, because they rejected it out of hand, they had no
19 interest in doing it at all. Their cry now that it is going to
20 take a long time for them to rebut our reports is disingenuous
21 too. We've gone ahead and told them what our sample is. We
22 have told them what loans we are going to look at.

23 THE COURT: They already know what loans you are going
24 to look at?

25 MR. FITZGERALD: They already know what loans we are

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1 looking at, your Honor. This issue has been litigated multiple
2 times in this case. Judge Scheindlin decided the appropriate
3 time for rebuttal reports after opening reports for both sides,
4 for both parties. She gave it a lot of thought. She didn't
5 accept our proposal. She didn't accept HSBC's proposal. She
6 reached her own conclusion, entered that order. You carried
7 that through in your subsequent scheduling order. We think it
8 is the right staging and it is fair.

9 This bellwether process was meant to streamline
10 things. It wasn't meant to slow things down. If they wanted
11 to cooperate at the beginning, they could have.

12 THE COURT: The sampling that you have identified for
13 the loans, that is set in stone?

14 MR. FITZGERALD: We have provided them the list of
15 loans. If we need to change the sample, we'll let them know.

16 THE COURT: That's what you are operating on?

17 MR. FITZGERALD: That's what we are operating under
18 now. Another fallacy in their argument, they tipped their hand
19 in their letter that they intend to challenge our ability to
20 sample despite the case law that's out there that finds that
21 sampling is an acceptable form of evidence. If they are just
22 going to challenge us on our ability to sample at all, they
23 don't need time at all. They can do that right away.

24 THE COURT: That's helpful. Who from the defendants
25 wants to reply? Mr. Reddington. You need to delegate better.

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1 MR. REDDINGTON: Maybe so. Your Honor, the issue is
2 much more complicated than what you just heard from Mr.
3 Fitzgerald. Let me start with the basics. This is not a case
4 like a typical RMBS case. This is not a case that is brought
5 against a sponsor. This is not a case that's brought against
6 an originator. This is a case that is brought against an
7 indenture trustee. The indenture trustee had nothing to do
8 with the original origination and underwriting of any of the
9 loans in this case. The indenture trustee made zero
10 representations and warranties about the underlying loans in
11 this case.

12 THE COURT: I'm going to stop you for a second. These
13 are all perfectly legitimate arguments, but they seem like they
14 are arguments on the merits. If the plaintiffs want to prove
15 their case by doing the sampling and setting forth all of the
16 ways in which the loans were deficient, maybe they will win,
17 maybe they will lose, but if they decide that's the expert that
18 they are going to go forward with, the only question for us
19 right now is not whether that's enough for them to win or lose
20 their case, but how you are going to respond.

21 What the plaintiffs are suggesting, what Mr.
22 Fitzgerald is suggesting, is that you may be only challenging
23 that that is an illegitimate way to prove your case, which is
24 just a legal argument.

25 What I understood from your letters was that you were

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1 then going to go through these loans yourself and say no, no,
2 loan 642 actually did comply with these guidelines and, so it
3 wasn't a deficient loan or an improper loan, or whatever the
4 terminology would be, and you would be hiring an expert to
5 challenge the plaintiffs' expert view that the loans were
6 inadequate. If you are not going doing that, why do you need
7 so much time?

8 MR. REDDINGTON: I think we would be doing both, your
9 Honor. The first issue, under Second Circuit precedent, it is
10 not clear at all that sampling is appropriate.

11 THE COURT: Fair enough. Point 1 of your brief.

12 MR. REDDINGTON: Today is the first time I have heard
13 that they have identified their sample to us. Under the
14 original scheduling order back when Judge Scheindlin was still
15 in the case, there was a time that was set aside for the
16 plaintiffs to identify loans for further review, including if
17 necessary reunderwriting.

18 We don't know what that review is they are doing.
19 Maybe it's reunderwriting, maybe it's a sample, maybe it's a
20 sample of a sample. The only thing that was required under the
21 scheduling order is to identify loans for potential further
22 review.

23 They sent us that information just this month. There
24 are 7600 or 7700 loans in that schedule. We don't know whether
25 they intend to reunderwrite all 7600. We don't know if they

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1 intend to reunderwrite some portion of that 7600. Whatever
2 they are going to do, we have to be able to evaluate that and
3 challenge that. If they are going to be doing a reunder-
4 writing, then we certainly will be doing some reunderwriting as
5 well.

6 THE COURT: Why can't I ask you all to agree to some
7 protocol? I came to the bench thinking this was something I
8 was going to do, but it sounds like it was something proposed
9 in the first instance. Why can't you all work together and
10 agree that this is a sample of loans you are going to do?

11 Your view is six weeks isn't enough time. It is
12 almost July 1st. You will have 9 months or whatever it is to
13 start that process. Ideally, you could all agree on what the
14 appropriate guidelines are, that these are the sort of
15 standards that everybody is reviewing these loans against. Why
16 can't you agree to something like that?

17 MR. REDDINGTON: The protocol they proposed, your
18 Honor, was a nonstarter. Basically, the protocol they proposed
19 was for HSBC to do all their work for them. Their basic
20 proposal was you guys go out and get the loan files, you guys
21 go out and get the underwriting guidelines, then you certify to
22 us which underlying guidelines you think apply to the loans,
23 and then we will go forward with that as the protocol. That
24 was their proposal, which is of course preposterous.

25 They have the burden of proof here. We have no basis

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1 to decide without some sort of expert which the appropriate
2 underwriting guidelines were, where the loan files are. That's
3 all their burden. That was their proposal.

4 Could there be some other more reasonable proposal?

5 Perhaps. I think the question is going to become, what does
6 that sample look like? Again, we don't concede that sampling
7 is even appropriate in a case against an indenture trustee.

8 THE COURT: But you said that if they are going to do
9 sampling, you are going to challenge it. It doesn't really
10 matter to me whether or not you are going to make a legal
11 argument and whether it is a winning legal argument. That
12 doesn't matter for my purpose now.

13 My purpose is to figure out how much time is really
14 fair for you to respond to their reunderwriting expert report.
15 What I'm hearing now is that they have already told you, maybe
16 it was 6 months ago, maybe it was today, which loans they are
17 going to use.

18 It seems to me that the better course would be for
19 everybody to agree that those 7,700 loans is correct or maybe
20 the number should be smaller or maybe the number should be
21 larger, and for you all to agree that there are certain
22 guidelines that we all accept are the appropriate guidelines
23 against which we should measure these, and then you both go on
24 your ways. Then everybody has the same amount of time and an
25 equal opportunity to prepare the reunderwriting. That seems to

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1 me the fairest way to proceed.

2 MR. REDDINGTON: Certainly if they were to tell us
3 soon, as soon as they can, these are the loans that we are
4 going to be reunderwriting, we could use that then to figure
5 out how much time is necessary for a rebuttal report. For
6 example, if they are really going to reunderwriting 7600 loans,
7 I would be surprised if that's true. If they are telling us
8 that today, every loan takes two to four hours to reunderwrite,
9 so you can do the math and figure out that you have a lot of
10 time that would have to go into that underwriting.

11 If we learn that day, we would have some ability to
12 prepare for that. If we don't know that until we get their
13 expert report, we are at a huge disadvantage. I think the
14 first requirement would be for them to identify as early as
15 possible the actual specific loans they say are in their sample
16 and that they are going to reunderwrite.

17 The issue of agreeing on guidelines that is a much
18 more complicated issue that would be hard to do in part because
19 these loans -- again, this is a little different case.

20 Typically, cases are brought within one trust or they are
21 brought within trusts that are related in the sense that they
22 either came out of the same shelf, had the same sponsor, were
23 originated around the same time. That's not the case here.

24 We have 300 trusts in which there are hundreds of
25 different originators, there are dozens of different sponsors,

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1 there are literally potentially hundreds of different under-
2 writing guidelines that could apply to any particular loan.
3 And all of those guidelines by the way, your Honor, had
4 exceptions to them that the originators were entitled to use to
5 deviate from the guidelines.

6 So, asking the party that doesn't have the burden, who
7 didn't originate the loans, and who doesn't possess the loan
8 files to stipulate to particular guidelines, it's a big ask.
9 It's a stretch.

10 THE COURT: If you all could negotiate for fewer
11 loans -- that's a big number. 7,600 whatever it is, is an
12 enormous number. Is it possible for you all to have a
13 conversation in the coming days, weeks, about how many loans
14 should be the sampling and agree that you will work within that
15 sampling, which is to say that neither party will challenge the
16 number of loans within the sampling, everybody will agree that
17 it is a reasonable sampling?

18 I'm not saying everyone will agree that sampling is
19 the correct way to do it as a matter of law, but simply that
20 there will be no challenge to an expert's conclusion from one
21 side or the other that the sampling is too small. Is that
22 something that the parties could in theory agree upon?

23 MR. FITZGERALD: Your Honor, I haven't spoken to all
24 my plaintiff colleagues, but for Phoenix Light and Commerzbank,
25 we would be open to that, and I suspect the other plaintiffs

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1 would as well.

2 Your Honor, I think Mr. Reddington glossed over one
3 aspect of the loan file reunderwriting protocol, and that was
4 the collection of loan files which they have a contractual
5 right to. That's why we did ask them to exercise that right.
6 They wouldn't exercise that right, which is why we have had to
7 subpoena everybody.

8 The reason that it's helpful to have agreement on the
9 loan file is so it eliminates any dispute as to whether the
10 loan file was complete or not. That way the experts know
11 exactly what they need to analyze. That's a very helpful part
12 of the protocol.

13 THE COURT: It seems to me you all should be able to
14 agree on an appropriate sampling, both the size and whatever
15 loans should be in there, and that you should be able to agree
16 on what the complete files are. It seems like the ship has
17 sailed a bit on whether or not HSBC is going to provide those
18 loans to you because it sounds like 18 months ago they said
19 they were not and now you have gone ahead and located them
20 yourself. Whether that is true or not doesn't really matter to
21 me. It seems to me that the outstanding issues right now are
22 what is the loan size, what loans are in that loan sampling,
23 and whether or not each loan file is complete. Those seem to
24 be issues that you all should be able to agree upon.

25 I understand Mr. Reddington's argument that agreeing

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1 upon what are the guidelines may be complex. I'll just throw
2 out to you that if it's complex for everybody in this room to
3 figure out, I don't know how you think a jury is going to
4 evaluate this. It seems to me that you are all better served
5 to agree upon what are the appropriate guidelines.

6 I don't know how Judge Schofield is going to instruct
7 a jury as to if you have competing experts, how she is going to
8 give them any guidance. You should be thinking about things
9 like this. It seems to me wise now to agree, and compromise if
10 necessary, on certain guidelines so that you can at least give
11 a standard that the court and jury can apply rather than
12 fighting over that as well.

13 You should be able to work this out. Given the
14 schedule that I am proposing, which is now closing fact
15 discovery on April 1st, if you can spend the next month
16 finalizing these terms, HSBC will be in a much fairer position
17 to submit its expert report along the schedule that was
18 initially in the scheduling order.

19 Yes, sir?

20 MR. JACOB: Charles Jacob on behalf of Triaxx Trust.
21 In the spirit of full disclosure -- we informed HSBC's counsel
22 of this in our early meet-and-confers -- Triaxx only holds one
23 of the bellwether trusts. The bellwether trusts, quite
24 unfortunately in our view, were selected before we came became
25 part of the coordinated cases. So we have one. Triaxx does

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1 not see the need for sampling. As to the one bellwether trust
2 that we hold, we are going to identify all the loans that we
3 think are defective and will inform counsel of what those are,
4 about 300.

5 THE COURT: Okay.

6 MR. JACOB: The reason is simple, your Honor. We
7 understand they are going to challenge sampling from a legal
8 point of view, and we don't want to be bothered with that. We
9 are not going to go that route. Our case is a little different
10 than the big putative class actions in that regard.

11 THE COURT: Okay. As always, I leave you all with a
12 lot of work to do. I want a letter on July 15th on where we
13 are on HSBC's production.

14 I'm trying to get off the bench, but now I have one
15 other thing I want to ask about. In HSBC's proposal there was
16 a class certification date that was proposed and there was
17 nothing there from the plaintiffs. Is that because the
18 plaintiffs don't think that that is appropriate or they don't
19 want to talk about it now?

20 MR. GALDSTON: Your Honor, we are happy to talk about
21 it. At the time the letters were submitted, it was our
22 expectation that plaintiffs would file their opening briefs on
23 July 11 per the original schedule. In light of some of the
24 issues that have been raised today, we certainly are willing
25 and will defer to the Court as to what a reasonable adjustment

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1 to the schedule might be in light of some of the issues that
2 have been raised today. Certainly we think that the date
3 proposed by HSBC is unnecessarily prolonged and truly
4 inconsistent with rule 23's directive that the class
5 certification motion be made at an early practicable time.

6 MR. WOOD: BlackRock and the Royal Park plaintiffs are
7 the only cases styled as class actions. Judge Schofield's last
8 order left that date, the July 11th date, as it was. She was
9 going to schedule a pre-motion conference on what the class
10 cert. that the parties submitted last week, but I think she put
11 that off so we could have this discussion now. I assume she is
12 still going to have that conference and wants to talk about how
13 the class certification or perhaps what the motions look like.
14 From our perspective, we think that the current date is
15 appropriate and there is no reason to change it.

16 THE COURT: I think she is going to handle it, so I
17 don't think we need to discuss it further. I just wanted to
18 see where we were here. I think she is going to have the
19 conference.

20 I am going to issue a scheduling order with April 1 as
21 the close of fact discovery. It is not a date that is going to
22 be extended. Everybody should working toward that. I want to
23 get a letter from you all, one letter from the defendants and
24 the plaintiffs jointly, on August 1. Please do your best to be
25 as brief as possible, but I know there may be a lot of issues

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1 there.

2 Whatever is outstanding on the document discovery, if
3 there are any outstanding disputes there, the plaintiffs should
4 be identifying to HSBC with specificity what remains to be done
5 and what is a realistic time for disclosure of those documents.
6 Nothing should be produced beyond August 11th. And you should
7 be working to do a rolling production. Let HSBC know what
8 remains with specificity, please. And if there are any ongoing
9 discovery disputes relating to the documents, that should come
10 in on the 1st.

11 The other thing I want you to discuss is this issue
12 with respect to expert discovery. I believe strongly that
13 there should be an agreement here and that that will streamline
14 the process. It makes perfect sense to me that everybody can
15 agree on which loans are to be reviewed and reach an agreement
16 on the completeness of the loan files.

17 In addition, I think you should all be discussing very
18 seriously having agreement on the guidelines. I appreciate Mr.
19 Reddington's argument that that is part of his defense, that
20 each one is different. Maybe there can be agreement with
21 respect to each trust that is in the bellwether as to what the
22 guidelines should be. I think it presents very significant
23 trial issues. If you are having to argue to a jury what are
24 the appropriate guidelines here, I think it is going to be
25 incredibly difficult. So, on the 1st of August, if you can

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1 also report to me where you are on those issues.

2 I think that is all for us now. I'm going to be
3 speaking with the Royal Park folks tomorrow, but I will let you
4 talk with my deputy to confirm. I think we are going to be
5 speaking tomorrow on our outstanding issue.

6 Anything further?

7 MR. GALDSTON: Nothing from the BlackRock plaintiffs,
8 your Honor.

9 MR. FITZGERALD: No, your Honor.

10 MR. LIBRA: No, your Honor.

11 MR. REDDINGTON: Nothing from us, your Honor.

12 THE COURT: Good. Have a good July 4th weekend and
13 safe travels home everybody.

14 (Adjourned)

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